

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARK THOMPCKINS,

Defendant-Appellant.

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UNPUBLISHED

September 15, 2000

No. 212883

Wayne Circuit Court

Criminal Division

LC No. 98-001904

Before: Kelly, P.J., and White and Wilder, JJ.

PER CURIAM.

Defendant was convicted, following a bench trial, of possession of less than twenty-five grams of cocaine, MCL 333.7403(2)(a)(v); MSA 14.15(7403)(2)(a)(v), and sentenced to six months to four years' imprisonment. He appeals as of right. We affirm.

Defendant first argues that the evidence was insufficient to support his conviction. We disagree. Two police witnesses testified at trial. Officer White testified that, while conducting surveillance of an abandoned house for suspected drug activity, he observed several individuals, including defendant, approach the house and engage in apparent drug transactions with an individual in the house. White observed defendant hand money to the other individual, who shook something from a brown vile into defendant's hand. A second witness, Officer Jackson, testified that defendant began running when he observed Jackson approaching, and Jackson pursued defendant on foot. About five seconds into the chase, at a point where Jackson was about ten feet behind defendant, the officer observed defendant toss an object from his right jacket pocket onto the ground. Jackson continued to chase defendant for another 2-1/2 blocks where he finally apprehended him and placed him under arrest. Jackson then "backtracked" and, after searching for a few minutes, found the rock of cocaine, which was about the size of a fingernail. Jackson testified that crack cocaine has a yellowish color and the rock stood out against a fresh packing of snow.

Defendant argues that the evidence was insufficient to establish that he possessed the small rock of cocaine because the testimony of Officer Jackson was not credible. The trial court acknowledged that it was "remarkable" that Officer Jackson could find something so small in the snow, but stated that the testimony was not "inherently incredible" and that it was more incredible to believe that the officer

would fabricate such a weak story. Because the issue turns on the credibility of the witness, we defer to the determination of the trial judge, who was the trier of fact, and will not resolve the issue of Jackson's credibility anew. *People v Vaughn*, 186 Mich App 376, 380; 465 NW2d 365 (1990).

Defendant further contends that even if Officer Jackson testified truthfully, the cocaine rock was found behind a house that was the site of significant narcotics activity and could have been dropped by other individuals. However, Officer Jackson's testimony sufficiently links the object tossed by defendant to the crack cocaine found in the snow. The prosecution was not required to negate every reasonable theory of innocence, but only to prove its own theory beyond a reasonable doubt in the face of whatever contradictory evidence was presented. *People v Carson*, 189 Mich. App 268, 269; 471 NW2d 655 (1991). Viewed most favorably to the prosecution, the evidence was sufficient to enable a rational trier of fact to find beyond a reasonable doubt that defendant possessed the rock of cocaine. *People v Hutner*, 209 Mich App 280, 282; 530 NW2d 174 (1995).

Defendant also argues that his sentence is disproportionate. This Court reviews a defendant's sentence for an abuse of discretion. *People v Rice (On Remand)*, 235 Mich App 429, 445; 597 NW2d 843 (1999). A sentence constitutes an abuse of discretion if it violates the principle of proportionality by being disproportionate to the seriousness of the crime and the defendant's prior record. *People v Milbourn*, 435 Mich 630, 635-636; 461 NW2d 1 (1990).

Because the court sentenced defendant within the recommended range of the sentencing guidelines, defendant's sentence is presumed to be proportionate. *People v Broden*, 428 Mich 343, 354-355; 408 NW2d 789 (1987). Considering the circumstances of the offense, defendant's substantial prior criminal record, and the fact that the instant offense occurred two days after defendant escaped from a corrections house, we find that defendant's sentence is proportionate to the offense and the offender. *Milbourn*, *supra* at 635-636. The trial court did not abuse its discretion.

Affirmed.

/s/ Michael J. Kelly

/s/ Helene N. White

/s/ Kurtis T. Wilder